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NO. 93-241

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

RUTH JAFFE,
Petitioner,

v.

HARDY M. SNOW, JR. and
ACCREDITED SURETY & CASUALTY CO.,
INC.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FIFTH DISTRICT

REPLY TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Petitioner respectfully submits this Brief in Reply to the Brief of the United States as Amicus Curiae.

The United States opines that the petition for certiorari should not be granted, because it finds that the

failure of a State court in this country to accord comity to the judgment of a court of Canada does not implicate the foreign relations of the United States. That is an extraordinary proposition.

How can it be said that important questions of foreign affairs are not presented when the abduction of Sidney Jaffe from Canada to the United States provoked diplomatic intervention at the highest levels, and the Government of Canada itself has participated in this case Amicus Curiae urging that the Court grant certiorari? How can it be said that a State has the power, consistent with this Court's decision in Hilton v. Guyot, 159 U.S. 113 (1895), to deny enforcement to a judgment of a friendly

foreign nation for reasons that are ill-defined, inapplicable, and openly driven by extralegal concerns?

The United States takes issue in particular with Petitioner's invocation of this Court's venerable decision in Ker v. Illinois, 119 U.S. 436 (1886). In that opinion, the Court suggested that the victim of a transborder abduction, who may nevertheless be prosecuted in the United States, could sue his kidnapper, and the courts would "without doubt" come to his aid. 119 U.S. at 444. Nor does the United States correctly render the Ker decision when it says that this Court "emphasized that recovery 'would probably depend upon moral aspects of the case.'" Brief of

the United States, at 11, citing Ker. It was not recovery, but the amount of recovery, that the Court said would depend on "moral aspects."

That an abducted prisoner, illegally brought across international borders to stand trial, could sue his kidnappers and win, this Court did not doubt. Nor has any decision of the Court since Ker in 1886 given reason to think that such was not the law of the land.

The State court decision to be reviewed in the case at bar challenges this Court's conclusion in Ker: a conclusion that was no mere "dictum," as the United States would have it, but an important part of the justification of an otherwise anomalous result:

authorization for the prosecution of a person whose presence in the jurisdiction to stand trial was itself procured in violation of law.

Finally, the United States cites out of context a paragraph from the decision of a Toronto trial court judge in a proceeding related to the one whose enforcement is sought here, to create the inference that Petitioner's judgment is somehow questionable, or tainted, or not final. Brief of the United States, at 18, citing Jaffe v. Miller, No. 85-CQ-6103 (Ontario Ct. Just., March 17, 1994)(Carruthers, J.). There is, however, in Canadian law or procedure no "uncertainty concerning the enforceability of Petitioner's judgment

in the courts of Canada." Id.

Petitioner's judgment is final and binding. The case before Carruthers, J., was not an appeal from the decision Petitioner brought to Florida for enforcement. These Respondents did not even participate in it.

Carruthers, J., evidently differed from Matlow, J. (of the Toronto court which awarded Petitioner her judgment), a judge in a sister and not a higher court, in his assessment of the evidence in a case not before him. But this does not create "uncertainty" about the finality or enforceability of Petitioner's judgment in Canada, a country whose judicial system, like our own, provides dissatisfied litigants

with the right to appeal from adverse judgments, and fora in which to do it.

For all of these reasons, the arguments against the grant of certiorari raised by the United States as Amicus Curiae should be rejected, and as Petitioner has previously argued, the writ should issue.

Respectfully submitted,

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